# STATE BOARD OF EQUALIZATION
# STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | **8/24/05** | Bill No: | **AB 671** |
| Tax: | **Sales and Use** | Author: | **Klehs** |
| Related Bills: | | | |

## BILL SUMMARY

This bill would:

- Extend for an additional two years, the provision that would allow qualifying purchasers to voluntarily register with the Board and pay their past-due use tax liabilities in exchange for a reduction in the number of years of past-due liabilities for which they will be held responsible;
- Require the Franchise Tax Board (FTB) to revise information accompanying the personal income tax and corporation tax returns to include information about taxpayers' obligation to report use tax.

### Summary of Amendments

The amendments delete the provision that would have imposed an additional 10 percent penalty for a person's failure to timely report and remit use tax, and make other nonsubstantive changes.

## ANALYSIS

### Current Law

Under the existing Use Tax Law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board on or before the last day of the month following the quarterly period in which the purchase was made, or to the FTB via the income tax return. A use tax liability is primarily a result of a California consumer or business making a purchase of an item for their own use from an out-of-state retailer that is not registered with the Board to collect the use tax.

Effective January 1, 2004, Assembly Bill 1741 (Stats. 2003, Ch. 697), added authority through Revenue and Taxation Code Section 6487.06 for the Board to administer an in-state voluntary disclosure program for qualifying purchasers. This statute allows qualified in-state purchasers, who are not otherwise required to hold a seller's permit or a consumer use tax permit, to register and report their use tax liability with a three-year statute of limitations. Normally, there is an eight-year statute of limitations for the Board to issue deficiency determinations against purchasers who have not reported their use tax liability. As an incentive for qualified purchasers to participate in the voluntary disclosure program, Section 6487.06 limits the statute of limitations for the Board to issue a deficiency determination for unreported use to three years rather than eight years. The statute also provides for the relief of any penalties imposed upon qualified purchasers if the Board determines that the failure to report or remit the use tax was due to reasonable cause.

Section 6487.06 is scheduled to sunset on December 31, 2005.

## Proposed Law

This bill would extend Section 6487.06 of the Sales and Use Tax Law until January 1, 2008.

The bill would also require the FTB to revise the information accompanying the personal income tax and corporation tax returns to inform taxpayers of their use tax obligations.

The provisions of this bill would become operative January 1, 2006.

## Background

The Board is the state agency responsible for administering the provisions of the use tax. However, in an effort to increase voluntary compliance by purchasers not registered with the Board, legislation enacted in 2003, SB 1009, (Alpert, Ch. 718) requires the FTB to add a line to the state's income tax forms allowing taxpayers to self-report their use tax liabilities to the FTB.

Historically, the largest area of noncompliance under the Sales and Use Tax Law is underreporting of the use tax. In 1993, the Board sponsored AB 1741 (Ch. 697, Assembly Revenue and Taxation Committee) which added Section 6487.06. The Board’s intent in creating this voluntary disclosure program was to encourage voluntary compliance by individuals, as well as businesses; that are not required to hold a seller’s permit or a consumer use tax permit, to report their use tax liability with the incentive of reducing the period within which the Board may issue a deficiency determination against such taxpayers from eight years to three years. The shortened statute of limitations is patterned after Section 6487.05 which was added to the Revenue and Taxation Code in 1994, effective January 1, 1995. Section 6487.05 provides for a voluntary disclosure program for unregistered out-of-state retailers who have nexus in California to register and report past use tax liabilities, and also includes a shortened three-year statute of limitations. The in-state voluntary disclosure program for qualified purchasers is to encourage compliance in reporting the use tax in the same manner as Section 6487.05 does for unregistered out-of-state retailers.

Since the effective date of the statute, January 1, 2004, a total of 139 qualified purchasers have registered and reported $3,715,626 in use tax for periods within the three-year statute of limitations.

## COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author in an effort to increase use tax education and compliance.
2. **The August 24, 2005 amendments** would delete the provision that would have imposed an additional 10 percent penalty for a person's failure to timely report and remit use tax. **The May 9, 2005 amendments** would require the FTB to revise information accompanying the income tax returns (rather than revise the income tax returns, as the prior version of the bill would have required) to inform taxpayers of the additional penalty and benefit of paying use taxes prior to the expiration of Section 6487.06.
3. **Enactment of this bill would continue the incentive to report past use tax debts.** This statute has proven to be successful based on the past two years. Extending the sunset date would continue this incentive. In addition, the requirement that FTB provide more education on purchasers' use tax obligations with its returns would assist in notifying all California taxpayers of their responsibilities under the Sales and Use Tax Law.

## COST ESTIMATE

The cost to implement this bill would be insignificant.

## REVENUE ESTIMATE

We could reasonably expect at least $4 million during the two-year period that Section 6487.06 would be extended. Additional revenues of an unknown amount may also be realized with the information FTB incorporates on the forms filed for income tax purposes.

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